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Date: 16th December 2020
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Dept: Commercial Property

Dear Sirs

Planning Application 20/03555/STPLF

We are instructed by North Ferriby Parish Council in relation to the above application. Please take this letter as my client's formal response to the application. Whilst my clients do not object to the principle of the development they are very concerned that certain proposals within the application will cause significant and unnecessary harm to the neighbourhood and in particular the existing open space previously provided in accordance with a section 106 agreement relating to other development nearby. For the reasons which follow my clients take the view that without major revision the application is insufficiently detailed and the impact inadequately assessed such that it cannot be approved in its current form. Whilst it is hoped that the Council will act properly and responsibly and deal with the issues raised my clients have asked me to make it clear that they will seriously consider making an application for judicial review if permission is granted at this time.

I now turn to the substance of my client's concerns.

Existing Open Space

This area has been provided in accordance with a section 106 agreement of 2004. In that agreement there was a requirement to provide the Open Space and maintain the Plantation. The reason behind the requirement to provide these areas of land was to ensure that there was a separation between the development but also to provide an area that residents at large could use for the purposes of recreation. That has occurred since the works to provide the open space were completed and the land transferred to the Council and the area is much used and of great amenity to nearby residents. Whilst of more recent vintage but nevertheless of great relevance this area fulfils the function of open space as defined in the NPPF. The definition is;

"All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as visual amenity."

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On any reasonable interpretation it cannot be said that this area does not fulfil all of the above functional requirements. For these reasons it is incumbent upon the council to ensure that any proposals which diminish or reduce the ability of this area to continue to perform its important original function should not be approved without specific and quantifiable benefits to the wider area. The current proposals do not even begin to address this issue. Not only is there a quantitative but also a qualitative diminution in the area as a result of the proposals the effect will be to completely neuter the original requirements for provision in the first instance. There is nothing in the application proposals that seeks to either address this issue or to seek to diminish the impacts. As such the proposals cannot be approved in their current form.

Landscape Partnership Report

My clients have commissioned The Landscape Partnership, a specialist environmental and landscape consultancy, to appraise the proposals as currently submitted. As you will see they have concluded that the proposals are seriously deficient in a number of aspects. These deficiencies are such that the application is incapable of being granted planning permission at this time. I deal with each one in turn.

The principal concern is that there are no dimensions shown on the submitted plans. This calls into question the validity of the LVA which has been submitted. A proper LVA that can be relied upon to determine an application must actually make it clear what has been assessed. The lack of dimensions within the planning documentation and the LVA singularly fails to meet the required standard. As it stands, the LVA cannot be relied upon given the serious deficiency in that it cannot be said that the impact has been properly assessed when the assessor cannot have been able to assess the impact of the proposals when such important aspects such as the height, profile, gradient and width of the proposed bunds are not shown on the submitted plans.

A further inadequacy relates to the assessment which only considers the summer impact. It makes no attempt to consider the impact during the times of year when the trees will not be in full leaf thus exacerbating the impact of the proposals. In any event, The Landscape Partnership consider that the proposals will seriously diminish the amenity of the area and not actually achieve the stated purpose.

The LVIA must, therefore, be undertaken properly, resubmitted and re-consulted upon if the Council proposes to continue to consider determining this application.

With regard to the proposals there is a serious issue with the qualitative interference with the current users of the open space. The proposals will result in a situation where virtually 100 % of the current available recreation area will be lost. All that will be left is the path which cannot be regarded as open space. As mentioned above without quantified justification in the public

interest this loss cannot be justified in either recreational or landscape terms. The proposals would also be contrary to Policy C3 of the Council's Local Plan Strategy Document.

This states as follows;

“Policy C3: Providing public open space for leisure and recreation

- A. Proposals should maintain and/or enhance the quantity, quality and accessibility of open space and address any shortfalls in provision, when measured against the standards set out in Table 12.
- B. Development that increases demand for open space will be required to address this demand in line with Part A of this Policy. Where practicable, open space should be provided on-site and link in well with other green infrastructure features as described in Policy ENV5.
- C. Proposed open space, including open space required to make up existing shortfalls in provision, will be identified in the Allocations Document or a Neighbourhood Development Plan.
- D. Existing and proposed open spaces are shown on the Policies Map. Proposals resulting in the loss of an existing open space, sports and recreational buildings and land, will only be supported where:
 - 1. Assessments of existing provision against local standards demonstrate the land is surplus to requirements for all of the functions that open space can perform; or
 - 2. Replacement open space to an equivalent standard or better, in terms of quantity, quality and accessibility, is provided; or
 - 3. The development is for alternative sports and recreation provision, for which there is a deficit; and
 - 4. The loss of open space would not have an unacceptable detrimental impact on the amenity or character of the area.”

The proposals fall foul of A and D1 to 4 of the policy. As such they cannot be supported.

The Landscape Partnership draw attention to the function and usability of the proposed bunds. They come to the very clear conclusion that the proposals cannot be regarded as open space since they would be wholly inaccessible to the general public through height, profile and vegetation cover, thus falling foul of Policy C3. There is no reasoned justification that would enable the Council to consider making an exception to policy. However, in light of the current use of the open space and the function it fulfils it is difficult to imagine that any justification could enable an exception to be made.

Finally, the Landscape Partnership draw attention to a number of aspects relating to the tree planting proposals and the impact on existing trees and vegetation. As regards the existing

situation the Council cannot seriously countenance a situation where, in addition to losing usable and valued open space, it will put the existing trees and vegetation in a position where they are likely to suffer degradation through the extension of the engineered bund into their root protection areas (as illustrated in the Arboricultural Assessment). Such a decision would be perverse.

As regards the current proposals The Landscape Partnership make the point that “. Woodland is proposed on the bunds, but bunds are not ideal growing conditions (drainage, exposure, etc.) and it is likely to be some years before planting becomes sufficiently established to begin to screen views.” Even if approved the standard replanting condition would need to be amended to ensure that any planting that fails is replaced. My clients suggest that a suitable period would be 10 years but that should not be taken as any indication that my clients accept that the current proposals are in any way acceptable. Further, and of more importance is the securing of a robust management and maintenance regime to ensure the plants etc are weeded and irrigated and thrive. This should be for 10 years.

It is, however, an issue that will need to be considered as and when properly thought out proposals are submitted in the future.

The Recommendations for Further Study are not optional but necessary to ensure that the council has relevant, pertinent and substantial information to enable it to make a proper decision that would not be susceptible to a judicial review challenge.

Operational Issues

Finally, I am instructed that following the reporting of issues associated with a similar depot in Kent my clients have tried to raise the issue of facilities for drivers. There is currently no provision shown. I am instructed that the Council has told my clients that these are operational issues and not something for the planning application. That is completely wrong in that whilst they are operational issues they fall into the same category as the operational issues of hours of working and lighting schemes etc. In light of current experience this is not an issue that can be left and is something the council must consider as part of the planning application. The Council must ensure that adequate facilities are provided to deal with an anticipated issue in light of current experience of the operation of these types of facilities.

Summary and Conclusions

There are serious deficiencies in the submitted material and the Council must, as a minimum obtain the further information as set out in The Landscape Partnership report. Further, the proposals themselves require a complete rethink especially in relation to the overall approach to the important area of open space. Such new proposals must ensure that they achieve compliance with Policy C3. Any planning permission granted which does not take account of the above is very likely to be set aside on the basis of unreasonableness or irrationality.

Yours faithfully

A rectangular area containing a handwritten signature in dark ink. The signature is stylized and appears to be 'B McGeady'.

Bob McGeady
Consultant
Ashtons Legal